

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,  
MARISSA BLAIR, TYLER MAGILL, APRIL  
MUNIZ, HANNAH PEARCE, MARCUS  
MARTIN, NATALIE ROMERO, CHELSEA  
ALVARADO, and JOHN DOE,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

**Civil Action No. 3:17-cv-00072-NKM**

**DECLARATION OF JESSICA E. PHILLIPS**

I, Jessica E. Phillips, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Partner at the law firm Boies Schiller Flexner LLP, one of the law firms representing Plaintiffs in this action.

2. I submit this Declaration in support of Plaintiffs' Supplemental Memorandum of Law in Further Support of Their Motion for Sanctions against Defendants Elliott Kline a/k/a Eli Mosley and Matthew Heimbach.

3. To date, Kline has not complied with any of the deadlines ordered by the Court in its Order to Defendant Elliot Kline, ECF No. 516.

4. To date, Kline has not responded to any of Plaintiffs' telephone calls and voicemails. Plaintiffs have repeatedly attempted to call Kline at 610-406-2229, which is the phone number that Kline's former counsel, James E. Kolenich, provided to Plaintiffs. Attached as

Exhibit A to this Declaration is a true and correct copy of a November 9, 2018, email from Mr. Kolenich providing Kline's contact information to Plaintiffs' counsel.

5. To date, Kline has not responded to any of Plaintiffs' emails to Kline at Eli.F.Mosley@gmail.com, which is the email address that Mr. Kolenich provided to Plaintiffs. *See Ex. A.* Kline has also confirmed, via Mr. Kolenich, that this email address is correct. Attached as Exhibit B to this Declaration is a true and correct copy of a June 26, 2019, email from Mr. Kolenich informing Plaintiffs' counsel that Kline said that the "email [address] is correct and he will check it when he gets home."

6. On July 1, 2019, Plaintiffs' counsel sent an email to Kline, in addition to other Defendants, laying out step-by-step what Kline had to do to comply with the Court's Order of June 21, 2019. A true and correct copy of the July 1 email is attached to this Declaration as Exhibit C (attachments omitted). Kline did not respond to that email.

7. On July 2, 2019, the Third-Party Discovery Vendor emailed to Kline the Third-Party Discovery Vendor Contract. Attached as Exhibit D to this Declaration is a true and correct copy of a July 23, 2019, email from the Vendor to Kline confirming that the contract "was emailed to you on July 2nd through DocuSign."

8. Kline did not comply with any of the July 10, 2019, deadlines set forth in the Court's July 3, 2019, Order. Specifically, Kline did not provide Plaintiffs with his SCA consent forms or the Certification Form attached as Exhibit A to the Court's Imaging Order, ECF No. 383. Kline also did not execute the Third-Party Discovery Vendor Contract provided to him by the Vendor. Attached as Exhibit E to this Declaration is a true and correct copy of a July 11, 2019, email from the Vendor to Plaintiffs' counsel stating, "Elliot Kline has not yet executed the contract."

9. After Kline failed to meet these deadlines, on July 12, 2019, I called Kline and left him a voicemail regarding his discovery obligations and logistics for his upcoming deposition on August 7, 2019. Kline did not pick up his phone or return my voicemail.

10. On July 15, 2019, I emailed Kline regarding his non-compliance with the discovery deadlines that had already passed as well as his upcoming obligations. A true and correct copy of this email is attached as Exhibit F to this Declaration. Kline did not respond to this email.

11. Kline did not comply with the July 17, 2019, deadline set forth in the Court's July 3 Order to make his Electronic Devices and Social Media Account credentials available to the Third-Party Discovery Vendor.

12. On July 18, 2019, the Vendor confirmed to Plaintiffs' counsel that Kline had not signed the contract and had not sent any materials to the Vendor, and stated that the Vendor "ha[d] not received any communications from Elliot Kline." A true and correct copy of this email is attached as Exhibit G to this Declaration.

13. On July 23, 2019, the Third-Party Discovery Vendor emailed Kline to follow up on his signature on the Third-Party Discovery Vendor Contract, and stated, "All parties except for

you have signed the contract. It was emailed to you through DocuSign on July 2, 2019.” *See* Ex. D.

14. While ignoring communications from Plaintiffs’ counsel, Kline has continued to communicate with his former counsel, Mr. Kolenich, regarding the same subjects and during the same period. Attached as Exhibits H, I, and J to this Declaration are true and correct copies of June 25 and 26, 2019, emails from Plaintiffs’ counsel to Kline (Exhibit H); a June 27, 2019, email from Mr. Kolenich to Plaintiffs’ counsel (Exhibit I); and a July 12, 2019, email from Mr. Kolenich to Plaintiffs’ counsel (Exhibit J).

15. Plaintiffs’ counsel have begun arrangements to hold Kline’s deposition on August 7, 2019, at a federal district courthouse in or near Harrisburg, Pennsylvania. Plaintiffs’ counsel will be present for the deposition even if they receive no confirmation from Kline.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 23, 2019  
Washington, D.C.

/s/ Jessica E. Phillips  
Jessica E. Phillips